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I.

THE CONDUCT OF BUSINESS IN CONGRESS.

THERE are few subjects of equal public interest concerning which so much misunderstanding prevails among well-informed people as the course of business in the national House of Representatives. Most persons think that their representative can at any time, if he choose, rise in his place and demand the attention of the House to a speech on any subject which may interest him or his constituents, and compel the body to record its opinion on any bill or resolution he sees fit to introduce. This is far from being true. The House of Representatives is governed by a complicated and artificial system of rules, so difficult to be understood that many able men of great national fame go through long terms of service without professing to comprehend it. It is not my purpose to write a treatise on this complex arrangement. I wish only to call attention to the operation of a few parts of the mechanism which seem to me to require alteration, and to show how they tend to diminish the authority, weight, and dignity of the House, and how they have deprived that illustrious body of the equality with the Senate which the framers of the Constitution contemplated.

The representatives of the large States in the Convention of 1787 contended earnestly for the apportionment of representation among the States in both branches according to numbers. The representatives of the small States demanded equality of representation in the Senate. This difference seemed for a long time inca-

pable of adjustment, and nearly caused the Convention to break up without accomplishing its purpose. The difficulty was compromised by the appointment of a committee of one from each State, whose report was adopted with some modification. The large States yielded the equality of representation in the Senate, but demanded and secured for the House the sole power of originating bills for raising revenue. The clause as reported was as follows:

> All bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature, and shall not be altered or amended by the second branch; and no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.
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> In the second branch, each State shall have an equal vote.

The clause as to revenue bills was adopted in this form:

> All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

It will be observed that, while the Convention voted to confine the power of originating bills for raising revenue to the House, it with equal distinctness voted not to extend this prohibition to bills for appropriating money. The system so established differs from the Constitution of England in three essential particulars: In England, no appropriation for a public purpose can be introduced in the House of Commons without a previous request from the Crown; no money bill can be amended by the Lords; and the exclusive prerogative of the Commons extends to all bills for raising or appropriating money. So jealous are the Commons of this prerogative, that the Lords rarely attempt to make any but verbal alterations in money bills, in which the sense or intention is not affected; and, when the Commons accept these, they make special entries on their journals recording the character and object of the amendments, and their reasons for agreeing to them.

There is no historical evidence that anybody in the Convention gave much consideration to the effect of these changes from the English system upon the value of the prerogative. The better opinion was, that the importance of the privilege, as asserted by the English Commons, was very much exaggerated, and that American experience in those States whose constitutions contained a like provision had shown that it was without advantage, and was a fruitful source of wrangling between the two Houses. Mr. Madison

said: "I confess I see nothing of concession in it. The originating money bills is no concession on the part of the smaller States, for, if seven States in the second branch should want such a bill, their interest in the first branch will prevail to bring it forward. It is nothing more than a nominal privilege."

This is one of the few subjects upon which General Washington's vote is recorded: "He disapproved, and till now voted against, the exclusive privilege. He gave up his judgment," he said, "because it was not of very material weight with him, and was made an essential point with others, who, if disappointed, might be less content in other points of real weight."

Similar views were expressed by many of the most eminent members. Three of the larger States, to whom this privilege was offered as a concession, by way of equivalent for the equality of the small States in the Senate, voted against it as an independent proposition. Mr. Hallam, in his "Constitutional History," expresses a similar opinion as to the exaggeration by the House of Commons of the importance of their exclusive privilege. If this view was sound when the scheme was to deny all power of amendment to the Senate, it has infinitely greater weight after the power of amendment has been yielded. The pocket of the Englishman is protected against lavish expenditure by the fact that no sixpence of his money can be granted for a public purpose that has not first been asked for by the Crown, on the advice of a responsible and accountable minister, and because none of his possessions can be made the subject of tax, excise, or duty, unless the proposal come from his own representative. The assent of the sovereign and the Lords is only needed to give the force of law to what is the gift of the free will of the Commons.

To the system established by our Constitution, widely departing as it did from the methods by which the unwritten constitutional law of England keeps the power of the purse in the hands of her Majesty's faithful Commons, two important additions have been made by construction. It should be stated that, whenever a question has arisen between the two branches in regard to the construction of this clause in the Constitution, the House of Representatives has invariably had its own way. It was said by Mr. Webster, in the Senate, in 1833: "The constitutional question must be regarded as important, but it was one which could not be settled by the Senate. It was purely a question of privilege, and the decision of it belonged alone to the House."

1. By a practice as old as the Government itself, the constitutional prerogative of the House has been held to apply to all the general appropriation bills.

2. The power of amendment, as on other bills, has not been held, as between the two Houses, to be limited to the subjects embraced in the bill as sent from the House, or to perfecting its special arrangements. Each House has a rule, which seldom is an obstacle to the accomplishment of anything which a majority of its members desire, declaring that no proposition on a subject different from that under consideration shall be admitted under color of amendment. It seems impossible to doubt that the amendments contemplated by the framers of the Constitution were amendments touching the particular subject matter to which the clauses received from the House relate. The House of Commons, so strict to assert its prerogative against the Lords, admits the right of the Lords to amend, by admitting altogether provisions which are not germane to the other provisions of the bill (189 Hansard, third series, 411).

The rules of our House are so construed that, on the great appropriation bills, any amendment designed to carry into effect existing law, or provide for administering any department of the Government, is held admissible; and they are never invoked by the House against the Senate.

If this were all—if the House and Senate were two bodies of equal numbers, acting under the same rules, and made up substantially of men of the same sort—it is difficult to perceive the slightest advantage that the House or the people could derive from this prerogative, so far as it relates to the appropriation of public money. The eleven general appropriation bills, and one or more deficiency bills, are reported annually. The former are required by a rule of the House to be reported from the Committee on Appropriations within thirty days after its appointment. This rule is seldom obeyed. These bills contain, on an average, appropriations to the amount of more than two hundred millions, to which the Senate commonly adds many millions more. These Senate amendments embrace every variety of expenditure for the public service, and every variety of new legislation; the discretion of the upper branch being, in this particular, as absolutely unaffected by this constitutional barrier as if it had no existence whatever. The wishes of the Senate, in case of difference of opinion in regard to a proposition which the Senate originates, are much more likely to prevail when that proposition is added to a measure the House has agreed to,

than if the same measure should originate as a separate bill in the Senate, and be sent to the House by itself for consideration on its own merits.

The surrender of the power of amendment, then, as it has invariably been construed, was the surrender of the whole privilege. It has not only destroyed the advantage intended to be secured for the immediate representatives of the people, but has given the Senate a considerable preponderance of influence in legislation. It has enabled the Senate to exert the power of tacking clauses to bills of supply, and thereby to extort the consent of the House. This power has been always denied in Parliament, even to the Commons as against the Lords. On December 9, 1702, it was ordered and declared by the Lords, "that the annexing any clause or clauses to a bill of aid or supply, the matter of which is foreign to or different from the matter of the said bill of aid or supply, is unparliamentary, and tends to the destruction of the Constitution of this Government" (see Sir Thomas Erskine May's "Parliamentary Practice," seventh edition, pages 581–583).

But the destruction of the rightful power of the House over the great appropriation bills which regulate and supply the Government in all its ordinary administrative functions, and which contain a very large portion of its general legislation, is rendered more complete by the method of doing business to which the House has confined itself by its own rules. All appropriation bills which are first reported in the House must, by their rules, be first discussed in Committee of the Whole. No bill can be reported from this committee to the House until every member has had an opportunity to move as many amendments as he chooses. Debate cannot be stopped by the previous question. The House before going into committee may, it is true, order debate to close on any particular section or on the whole bill at a fixed time. Yet this does not prevent amendments, and is rarely resorted to until debate has strayed from the particular subject of the bill into general political discussion. So far, therefore, as the consideration of the appropriation bills as originally reported is concerned, the usages of the House preserve for itself the character of a deliberative assembly, and for each of its members the privilege of expressing his opinion in debate, and of bringing to a vote whatever measure he may desire. But these bills then go to the Senate. They are there examined by the appropriate committee, and reported to the Senate, where days are spent in their consideration, with unlimited opportunity for debate and

amendment. Not only is the original bill remodeled, reviewed, revised, at the pleasure of the Senate, but hundreds of entirely new provisions are added at the pleasure of the upper branch. The measure which came from the House, the prerogative of originating which is specially secured by the Constitution and guarded by the House with such jealous care, has precisely the same position and weight, neither more nor less, as any proposition moved by a single member of the Senate.

When the bill goes back to the House, containing the Senate amendments, the session is usually far advanced. In the year of the short session the constitutional limit of the life of the House is approaching. In the alternate years, when the session extends into summer, the scorching heats render men eager to leave Washington, and the two branches have usually fixed the time of adjournment by concurrent vote. There is no time for examination, debate, or reference to Committee of the Whole. The House non-concurs in the Senate amendments in the lump, without hearing them read. The Senate insists. A conference is asked and granted. Conference committees are appointed, consisting of three members from each branch, usually the chairman of the Committee on Appropriations, with that member of the committee most conversant with the subject of the bill, and one member of the minority. These committees confer and agree upon a report compromising and compounding all matters of difference between the two Houses as they may be able. Their report is matter of the highest privilege. It may be made at any time, no matter in what business the House be engaged. A member who is speaking may be taken off his feet by its superior claim to attention. No motion to lay it on the table, to indefinitely postpone, or to amend it is in order. The House or Senate must accept it as a whole or reject it as a whole. If it be rejected, a new conference may be ordered, but the result of a conference must sooner or later be accepted in a mass, or the whole bill be lost. The House is all this time under a sort of duress. If it suffer the appropriation bill to fail, the Government must stop, or an extra session be held at midsummer, with its cost and discomfort. Every other year the House votes on the appropriation bill with the knowledge that if it do not agree to amendments on which the Senate insists, and the bill fail, its power over the subject must be lost altogether by the arrival of the 4th of March, when its life expires, and the new bill must be dealt with by its successors.

Degrading as this system is to the House as a body, its effect on

the individual member is still more remarkable. The whole power of legislation over that vast field which is covered by the Senate's amendments to the great appropriation bills is in practice delegated to two of the three members who are appointed on the conference committee. No other member gets a chance to discuss them, to vote separately on any one of them, to make any motion in relation to them, or even to see in print what the committee recommend in regard to them. "Gape, sinner, and swallow."

If the reader has followed this somewhat technical statement, he has observed that while the power of amendment reserved in our Constitution, as it is expounded in practice, allows to the Senate and to each of its members the fullest opportunity to deal with appropriation and revenue bills as freely as with bills relating to any other subject, the rules and usages of the House leave that body with much less practical power of deliberation or amendment in regard to all those provisions which have their origin in the Senate than the House of Lords has in relation to money bills under the English system.

Suppose, now, all this were reversed. Suppose the Constitution were to provide that all money bills should originate in the Senate, permitting the House to amend, as in the case of other bills. The House would then, on the arrival of the bill, commit it to the Committee of the Whole, where every clause proposed by the Senate and every amendment proposed in the House would be fully discussed, with unlimited power to propose changes, every individual member having the fullest opportunity to express his opinion or offer his plan; and the conference committee of both branches would receive the bill fully possessed of the views of their respective Houses as to every syllable which had been proposed by either. When, therefore, the large States accepted the clause in question as a partial equivalent for the equality of the small States in the Senate, they accepted a further limitation of their own power. When the House, in 1832, refused to permit Mr. Clay's compromise bill to have its origin in the Senate; when, in 1856, it refused to permit the Senate to originate some of the general appropriation bills; and when, in 1870, it refused to permit the Senate to add a revision of the whole tariff to a bill abolishing the duties on tea and coffee, its victory was an abdication of its equality in legislation with the Senate, and tended to deprive every one of its members of his right to debate or amendment in regard to a large part of the most important legislation of the country.

I have been speaking of the course of the ordinary business of Congress. Upon the great questions which move the heart of the nation and divide political parties, the body of the House and its leaders are commonly in full accord, and the representatives of the American people know how to make their power felt and assume their rightful and constitutional place in legislation. But even here it is not enough that the House preserves its power. The power to do what it will, and to refuse consent to what it will not, will not preserve its own dignity or its value as an important factor in legislation, unless its will is the result of its best judgment; in other words, unless it preserve its function as a deliberative assembly. The difficulty is not that on great occasions and great questions the voice of the House is stifled. On such occasions the House and its leaders are in accord with each other, and commonly in accord with a public sentiment which the Senate will not lightly resist. But the practice I have been exposing tends largely to take from the House the character of a deliberative assembly. The barren and empty privilege of originating bills of revenue and bills of supply it has purchased at the sacrifice of that essential prerogative—essential to its own dignity and to that of every individual among its members—its freedom of debate.

Let us pass now from the subject of money bills to a glance at the methods of general legislation. The morning hour of every Monday is devoted by the House to a call of all the States and Territories for the introduction of bills and joint resolutions. The House commonly takes care that every member has full opportunity to introduce as many bills as he desires. These bills are usually printed. The rule is peremptory that they shall be at once referred to their appropriate committees without debate and without the right to move to reconsider the vote of reference. Several thousand bills are introduced in this way in every Congress. Worthy citizens interested in special reforms are much gratified to read that their member has introduced some excellent and radical measures of reform. The bills themselves are copied by approving newspapers, and redound greatly to the credit of their enterprising authors. For all practical purposes, they might as well be published in a newspaper in New Zealand or Alaska. The processes by which these bills are strangled will be understood by comprehending the operation of the committees and the effect of the previous question.

The House has forty-seven permanent committees, and usually half a dozen special committees on important subjects. Appropri-

ation bills, revenue bills, contested-election cases, and resolutions authorizing the necessary public printing may be reported at any time. All other national legislation can only, under the rules, be reported from the appropriate committee when it is called by the Speaker for reports in its turn. For this call, an hour after the reading of the Journal, on every day except Monday and Friday, is set apart. Each committee is entitled, when it is called, to occupy this morning hour of each of two successive days with the measures which it has prepared, and, if its second morning hour expire while the House is actually considering one of its measures, to have that single measure hold over in the morning hour till it is disposed of. Supposing the two sessions which make up the life of the House to last ten months, and allowing for the holidays, the time taken for organization and appointing committees, and the time when the four privileged subjects above named take up the attention of the House, so that the morning hour can not be devoted to this call, I suppose one hundred days in two sessions is an unusually large average of days when such a call is had. This gives an average of not more than two hours apiece to the committees of the House to report upon, debate, and dispose of all the subjects of general legislation committed to their charge. From this time is taken the time consumed in reading the bill, and in calling the yeas and nays, which may be ordered by one fifth of the members present, and which requires forty minutes for a single roll-call. The members of the committees, of course, take special interest in the subjects assigned to them, which they have investigated and reported, and which they have prepared themselves to discuss. It will readily be believed, therefore, that the House is inclined to shorten rather than to lengthen the time given to any one matter—each member eager that the committee holding the floor shall give way as soon as possible, that the call may go on and his own committee's turn come the sooner. The committee holding the floor, if it have several measures matured, desires to hurry each along as fast as possible, that it may dispose of the others. After the bill is reported, the member reporting it is entitled to the floor for an hour. If the previous question is ordered, he has a further hour to sum up. No amendment can be offered till the member's first hour is over, and none after the previous question is ordered. The result is, that the floor is held by the member who made the report, and parceled out by yielding portions of his time to persons who desire to speak for or against the measure. The sense of fair play

in the House usually secures an equal division of the time allowed for debate between friends and foes. But the person who reports the bill dictates how long the debate shall last, who shall speak on each side, and whether any and what amendments shall be offered. Any member fit to be intrusted with the charge of an important measure would be deemed guilty of an inexcusable blunder if he surrendered the floor, which the usages of the House assign to his control for an hour, without demanding the previous question. The House in rare instances refuses to grant the demand, but this is at the hazard of prolonging debate indefinitely, which, for the reason above stated, is usually the last thing which any considerable number of members desire. Another expedient is more frequent. A minority who wish to secure a chance to debate or amend a specially obnoxious bill sometimes bring the majority to terms by what is called filibustering, that is, consuming time by repeated motions to adjourn, on which the yeas and nays are called, so that no progress is made in business until the majority grant time for debate or agree to test the sense of the House by permitting an amendment to be moved. These difficulties, which stand in the way of the introduction of bills in the regular mode under the rules, and beset them after they are introduced, have led to another device by means of which a large proportion, perhaps a majority, of all the bills which pass the House are carried through. Every Monday after the morning hour, and at any time during the last ten days of the session, motions to suspend the rules are in order. At these times any member may move to suspend the rules and pass any proposed bill. It requires two thirds of the members voting to adopt such motion. Upon it no debate or amendment is in order. In this way, if two thirds of the body agree, a bill is by a single vote, without discussion and without change, passed through all the necessary stages, and made law so far as the consent of the House can accomplish it; and in this mode hundreds of measures of vital importance receive, near the close of exhausting sessions, without being debated, amended, printed, or understood, the constitutional assent of the representatives of the American people.

In administering this system, the general outline of which I have given, many subtile and artificial constructions and distinctions have been established, which it is not necessary to deal with here. I have failed to make myself understood if the reader has not seen how completely, by its own rules, the House has deprived itself of "that freedom of deliberation, speech, and debate" which

our early American constitutions declare to be "essential to the rights of the people." This result has been brought about by what is called "the previous question"—a guillotine which is in constant operation.

The previous question in England is used to postpone or defeat a question which for any reason it is not desirable to bring to a direct vote; never to force through a measure without debate. In early times the form of the previous question was, "Shall the previous question be put?" If this were decided in the negative, the question was indefinitely postponed; if in the affirmative, the question was at once put. In 1604, at the suggestion, it is said, of Sir Henry Vane, the present form, "Shall the main question be *now* put?" was substituted. Under this, if the vote be in the negative, the question goes over to the next legislative day; if in the affirmative, the question is at once put. If the previous question, as under our rules, were to be at once put without debate, it is obvious that the English system would put it in the power of a single member to stop debate, against the wish of the rest of the body, by making a motion which, if decided one way, causes the main question to be at once put, and, if decided the other, removes it altogether from before the House. But in England debate goes on after the previous question is moved as before, and the previous question is not voted upon till debate is exhausted. "Hence," Mr. Cushing says, "it happens that when the previous question is moved and seconded, the adversaries of the measure, instead of being confined in the debate to its merits, as would otherwise be the case, have the advantage of all objections which can be urged against the proposition itself, against the time when it is brought forward, and against the form in which it is moved; and this is an advantage of which they can not be deprived, so long as a single member objects to the withdrawal of the previous question."

The previous question thus restricted has never come into common use in Parliament. Sheridan, in a memorable debate, speaks of "the shabby shelter of the previous question." It never is applied in Committee of the Whole. It was never applied in the second reading of a bill until 1858, and it has probably not been resorted to a dozen times since.

The Senate, on its first organization in 1789, adopted by its rules the previous question as used in the House of Commons. On the 17th of March, 1806, it established a new code of rules in which no mention is made of the previous question; but the eighth rule was as follows:

While a question is before the Senate, no motion shall be received, unless for an amendment, for postponing the question, or to commit it, or to adjourn; and the motion for adjournment shall always be in order, and shall be decided without debate.

By this rule the Senate abolished the previous question altogether. For seventy-two years there has been no restraint in that body upon the liberty of debate and the power of amendment. Mr. Foot of Connecticut proposed, on the 23d of January, 1832, that the question of consideration should be decided without debate. This was denounced by Mr. Benton as an invasion of the liberty of speech, and was not pressed.

In 1841, after twelve years of Democratic rule, the Whigs took possession of the Government, with a majority of nearly fifty in the House and of seven in the Senate. On the 6th day of July, at the extra session, the rules of the House were amended by adding that the House might, "by a majority vote, provide for the discharge of the Committee" (of the Whole) "from the consideration of any bill referred to them, after acting without debate upon all amendments pending and that may be offered." This was carried by a vote of 117 to 95, after a considerable struggle. John Quincy Adams speaks of it in his diary as "a new screw." Mr. Medill, afterward Governor of Ohio, denounced the new rule in language which would seem both impressive and prophetic, if we did not find like epithets so constantly in the mouths of Democratic speakers on all occasions great and small:

What is the tendency and operation of this monstrous proposition? It is to enable the majority to apply the *gag* in Committee of the Whole as well as in the House, and thus cut off debate on any subject whatever. This is a proposition that I venture to say was never before made in any legislative body, and even in the British Parliament would subject its mover to the most indignant rebuke. In the Committee of the Whole the utmost latitude of debate has ever been indulged, and there the minority have a right to be heard without any other restraint than is imposed on all. In the British Parliament, as well as in the legislative bodies of this country, all bills raising supplies or levying taxes must be committed here, that the discussion may be free, and unrestrained by the majority, which is most frequently with the Executive.

But adopt the proposition of the gentleman from Massachusetts (Mr. Calhoun), and you can cut off all debate, not only in the House but the Committee of the Whole, whenever a drilled majority shall so determine. Thus appropriations may be made and our constituents taxed to maintain the expenses of our extravagance of government; and, standing here in the minority,

though representing a large and intelligent constituency, our mouths may be absolutely closed, and abuses of every kind may be practiced without the possibility of exposure.

Immediately after the declaration of the vote, Mr. Lott Warren of Georgia, with a view, as he said, "to carry out the reform which had been begun," announced his purpose to offer as an amendment to the twenty-eighth rule: "And that no member be allowed to speak more than one hour to any question under debate." This was adopted on the following day, June 7th; yeas 111, nays 75. Mr. Adams records in his diary: "I voted against the resolution, but hope it will effect much good." On the 8th of June, the House being in committee on the loan bill, while Mr. Pickens was speaking in opposition, the Chair reminded him that his hour was out. Mr. Pickens denied that the House had any constitutional right to pass such a rule. The Chair again reminded Mr. Pickens that he had spoken an hour. Mr. Pickens would then conclude by saying that it was the most infamous rule ever passed by any legislative body.

With this ineffective remonstrance the minority of the House submitted to the inauguration of the practice, which has ever since prevailed with constantly increasing strictness. I suppose the large majority of measures which pass the House of Representatives are passed on motion to suspend the rules and adopt the bill, on which motion neither debate nor amendment is permitted, or under the previous question, moved by the member who introduces the measure at the time of its introduction, either wholly without discussion or amendment, or with only so much of either as the mover, in his discretion, sees fit to allow.

These resolutions, which have had so great effect on the character of the House, are attributed by Mr. Benton to Mr. Clay. Mr. Clay was the leader of the Whig party in Congress. His lordly and imperious nature chafed under the incessant and vigorous attacks of his Democratic antagonists on the one hand, and the refusal of the Executive branch of the Government to submit to his dictation on the other. He was impatient to carry through the measures for which the extra session had been called. The Whigs had taken possession of the Government after the sweeping political revolution of 1840, eager to reverse the policy which had prevailed for twelve years, and, with a brief interval, since the accession of Jefferson in 1801. In regard to every one of the great subjects of legislation, the Whigs attempted to exercise national powers which had

never been used or had long lain dormant. The Democrats encountered every measure with the charge that it violated the Constitution, and that it was legislating for the rich against the poor. The Democrats in the Senate, reduced in numbers, were united and compacted by their defeat, and never had abler leaders. Franklin Pierce, Levi Woodbury, Silas Wright, James Buchanan, John C. Calhoun, William R. King, Robert J. Walker, William Allen, Lewis F. Linn, Thomas H. Benton, with associates of scarcely less eminence, acted, says Benton, "on a system, and with a thorough organization, and on a perfect understanding. There were but twenty-two of us, but every one a speaker, and effective. We kept their measures upon the anvil, and hammered them continually; we impaled them against the wall, and stabbed them incessantly." Almost every sentence of their speeches had its separate sting, often going to the very verge of parliamentary freedom of debate. "Action, action, action," cried Calhoun, "means nothing but plunder, plunder, plunder!"

As soon as the new rule had been adopted in the House, and the peaceable submission of the minority ascertained, Mr. Clay gave notice of his purpose to introduce it in the Senate. Fortunately for the Senate, fortunately for the country, he encountered a very different spirit from that which prevailed in the lower branch.

Mr. Benton states that the Democratic Senators, having got wind of what was to come, had consulted together and taken their resolve to defy and dare it—to resist its introduction and trample upon the rule if voted; and, in the mean time, to gain an advantage with the public by rendering odious the attempt. In pursuance of this agreement, the minority did not wait for Mr. Clay formally to propose his rule, but raised the first pretext to demand an explanation of his purposes. In reply to some remarks of Silas Wright on the fiscal-bank bill, Mr. Clay charged that the opposition to the measure was meant to delay the public business, "with no other design than to protract to the last moment the measures for which this session had been expressly called. This, too, was at a time when the whole country was crying out in an agony of distress for relief."

Mr. Calhoun resented this imputation with great spirit, and demanded: "Did the Senator from Kentucky mean to apply to the Senate the gag law passed in the other branch of Congress? If he did, it was time he should know that he and his friends were prepared to meet him on that point."

Mr. Clay replied that he was "ready at any moment to bring forward and support a measure that should give to the majority the control of the business of the Senate of the United States. Let them denounce it as much as they pleased in advance; unmoved by any of their denunciations and threats, standing firm in support of the interests which he believed the country demanded, for one he was ready for the adoption of a rule which would place the business of the Senate under the control of a majority of the Senate."

Mr. Calhoun said there was "no doubt of the Senator's predilection for a gag law. Let him bring on that measure as soon as ever he pleases." Mr. Benton: "Come on with it."

Benton, in his "Thirty Years' View," states that Mr. Clay found that some of his associates who had agreed to stand by him in establishing the hour rule withdrew their promise under the firm opposition of the minority, and that the latter had determined not only to oppose the adoption of the rule, but to resist its execution, even if the resistance should involve disorder and violence. Mr. Clay under these circumstances gave way, but proposed the introduction of the previous question, expecting this would be accepted as a compromise. Three days after the former debate he declared that "the minority controlled the action of the Senate, and caused all the delay in the public business. They obstruct the majority in the dispatch of all business of importance to the country, and particularly those measures which the majority is bound to give to the country without further delay. Did not this reduce the majority to the necessity of adopting some measure which would place the control of the business of the session in their hands? It was impossible to do without it; it must be resorted to."

Benton says that "several Whig Senators had refused to go with Mr. Clay for the hour rule, and forced him to give it up; but they had agreed to go for the previous question, which he held to be equally effective, and was in fact more so, as it cut off debate at any moment. It was just as offensive as the other."

Mr. King, afterward Vice-President, said he was "truly sorry to see the honorable Senator so far forgetting what is due to the Senate as to talk of coercing it by any possible abridgment of its free action. The freedom of debate had never yet been abridged in that body since the foundation of this Government. Was it fit or becoming, after fifty years of unrestrained liberty, to threaten it with a gag law? He could tell the Senator that, peaceable a man as he [Mr. King] was, whenever it was attempted to violate that

sanctuary, he, for one, would resist that attempt even unto the death."

It was thought best that the public mind should be prepared for what might follow by a full statement of the position of the minority, which Mr. Benton was designated by his Democratic associates to make. The report of his speech in the "Congressional Globe" is somewhat tamer than that found in the newspapers of the day. He said: "He understood it was in contemplation to introduce the previous question into the Senate, not only in its ordinary proceedings, but in Committee of the Whole. It was easy to see how a bill would be amended there. He should consider an attempt to rule the Senate by the despotism of the gag as bad as introducing a band of soldiers into it to force measures through by pitching opposing Senators out of the windows."

He closed by saying:

> Sir, when the previous question shall be brought into this chamber—when it shall be applied to our bills in our *quasi* committee—I am ready to see my legislative life terminated. I want no seat here when that shall be the case. As the Romans held their natural lives, so do I hold my political existence. The Roman carried his life on the point of his sword; and when that life ceased to be honorable to himself or useful to his country, he fell upon his sword, and died. This made of that people the most warlike and heroic nation of the earth. What they did with their natural lives I am willing to do with my legislative and political existence: I am willing to terminate it when it shall cease to be honorable to myself or useful to my country; and that I feel would be the case when this chamber, stripped of its constitutional freedom, shall receive the gag and muzzle of the previous question.

Mr. Clay flinched before this resolute resistance, and in a day or two abandoned his project amid the taunts and defiance of his opponents.

Benton closes his narrative of this extraordinary contest by remarking: "Thus, the firmness of the minority in the Senate—it may be said their courage, for their intended resistance contemplated any possible extremity—saved the body from degradation, constitutional legislation from suppression, the liberty of speech from extinction, and the honor of republican government from a disgrace to which the people's representatives are not subjected in any monarchy in Europe. The previous question has not been called in the British House of Commons in one hundred years, and never in the House of Peers."

Neither party appears to much advantage in this narrative.

The Democratic leaders did not overrate the injurious consequences to public liberty of the suppression of debate and amendment at the will of a majority. The suppression of these in one branch of the national legislature renders infinitely more important their preservation in the other. Mr. Clay and his associates seem to have been acting under the pressure of a temporary exigency, and to have given little consideration to the grave and far-reaching consequences which their schemes involved. It is probable that the debate would have so fully exhibited the evil effects of the previous question on the Senate that Mr. Clay would have lost his slender majority before the vote; if not, the attitude taken by the Democratic party toward the rule would have assured its early repeal. But, however indefensible in principle, the Constitution gives to the Senate the power to make rules for the conduct of its business, and the question whether this rule were constitutional or expedient is one of which the Senate itself must, of necessity, be the final judge. The threat to resist its determination by violence was treasonable in its nature. Clay yielded to such threats, as he did in his compromise bill of 1832, and in his compromise bills of 1850. Benton was approving and sharing a defiance of lawful authority similar in kind to that which he supported Jackson in suppressing in 1832, and to that the shadow of whose near approach saddened the closing hours of his own life in 1858. We are dealing, however, with the effect of the previous question on the conduct of legislative business. The c nduct of those who proposed or of those who defended it is foreign to our present purpose.

The vast increase of public business in modern times has pressed as heavily on the British Parliament as it ever did on Congress. On three occasions—in 1848, in 1854, and in 1861—committees have been appointed, including some of the ablest and most experienced members, to suggest a remedy. On the committee in 1848 were Lord John Russell, Sir Robert Peel, Mr. Disraeli, Mr. Hume, Mr. Cobden, and Mr. Evelyn Denison, since Speaker; on that of 1861, Lord Palmerston, Mr. Bright, Lord Stanley, Mr. Disraeli, Sir George Grey, and Sir John Pakington. These men have had each of them a personal responsibility for the conduct of public business in Parliament, and were quite as likely as Mr. Clay to be impatient of the useless consumption of time in fruitless debate. But it never seems to have occurred to any of them to consider for a moment that it was possible to secure the dispatch of business by any abridgment of the freedom of debate. The committee in 1848

took evidence as to the course of business in our House of Representatives and in the French Assembly, examining Mr. Edward Curtis of New York, Mr. Josiah Randall of Philadelphia, and M. Guizot. The last named was examined by Sir Robert Peel and Mr. Cobden as to the operation of *la clôture* in the French Chamber of Deputies. He declared that he did not remember a case where *la clôture* was demanded by the majority to suppress discussion, and that, even with its existence, all subjects are amply and fairly debated.

The committee of 1848 say in their report:

> The Parliament of the United Kingdom conducts the whole work of public and private legislation, and to it all parties have recourse for the redress of real or supposed grievances. The extent, also, of the colonial empire of Great Britain imposes very heavy additional duties on the Imperial Legislature. It is certain that a far greater amount of business is transacted by the English House of Commons than by the Chamber of Deputies of France, or by the Legislative Assembly of the United States. ("Report of Select Committee on Public Revenues," 1847–'48, p. vii.)

Neither they nor the committee of fifty-four in 1861 suggest any interference with the freedom of debate. In 1861 the average length of the session was eight hours, thirty-four minutes, fifty-seven seconds. The number of days of the session was one hundred and forty-five; the number of hours the House sat after midnight, one hundred and forty-seven. The committee declare:

> The old rules and orders, when carefully considered and narrowly investigated, are found to be the safeguard of freedom of debate, and a sure defense against the oppression of overpowering majorities.

One other peculiarity of the conduct of business in the House, under its present methods, is the absence of responsible leadership. In the British Parliament the whole executive power of the Government is lodged. The prime minister, if a commoner, is the recognized leader of the majority of the House of Commons; if he is a peer, the function of leadership of that House is vested in a member of the Government, selected for that purpose usually for his tact and ability in debate. Differences of opinion, jealousies, struggles for personal advancement, distract the counsels of political parties in England as they do with us; but they are reserved for the secrecy of cabinet discussions, and are not permitted to show themselves in public in the House.

Lord Palmerston's diary for May 22, 1828, gives a curious ac-

count of the conduct of business in the cabinet, of which he was a member:

> The cabinet has gone on for some time past as it had done before, differing upon almost every question of any importance that has been brought under consideration; meeting to debate and dispute, and separating without deciding.

To this Sir Henry Bulwer adds:

> I can not help observing, with reference to the sentence last quoted, that the father of the late Lord Holland, who had lived almost all his life with cabinet ministers, once said to me that he had never known a cabinet in which its members did not dispute more among themselves during their councils than they disputed with their antagonists in the House of Commons.

These discords disappear when the measures of the Government are brought into the publicity of the House of Commons. Her Majesty's Government are responsible for the due preparation of all important measures. By the standing orders the right is reserved to her Majesty's ministers of placing Government orders at the head of the list on every order day except Wednesday; and near the close of the session this precedence is extended to other days, and sometimes to Wednesdays. In our House the business suffers from the want of some such arrangement. All subjects of legislation are parceled out among the different committees. Each of these almost comes to regard itself as a little legislature, and contends with great jealousy against encroachments on its own jurisdiction.

With rare and conspicuous exceptions of persons who bring to the House when they enter it a reputation which insures them a place at the head of some important committee, the members attain places of influence on these committees by seniority. The House becomes in this way a sort of presbytery, the senior member of each leading committee having special influence over his own subject. The result is, that there is a struggle between the different leading committees for the opportunity to bring their questions before the House. Toward the close of the session this contest becomes specially apparent. A member who has carefully prepared some important measure, with which he is identified in public estimation, feels that the success or failure of his political career depends upon his getting an opportunity to bring it to a vote. As the termination of the session approaches, the appropriation bills press for passage. The rules of the House give the Committees on Appropriations and

on Ways and Means, who have charge of the kindred measures of revenue, the right to report at any time when a member is not speaking. The right to report from a conference committee is even more highly privileged, and may be exercised when a member is actually on his feet in the midst of a speech. The chairman of the Committee on Appropriations, who may be held responsible if one of the great bills under his charge fails and an extra session is made necessary, feels that he must use his power without much mercy. The result is, that he becomes almost the natural enemy of every other important bill before the House. In the Forty-first Congress, General Schenck, as chairman of the Ways and Means Committee, prepared a thorough revision of the tariff. The House spent many days and nights in perfecting the bill. At last, on the 16th of May, the chairman of the Appropriations Committee moved that the bill be postponed until after the appropriation bills. This motion was hotly resisted by the chairman of Ways and Means, but was adopted by a vote of 92 to 77, the Democrats voting for the motion in a body. Thus, the most important measure of the session, which had taken the House months to mature and perfect, was defeated by the opposition combining with a few Republicans, under the lead of the chairman of one of the two most important committees, against the resistance of the chairman of the other. Such an occurrence in the British Commons would have caused the overthrow of an administration. It could hardly be termed unusual in any Republican House for the past twenty years.

In the winter of 1874–'75 the House ordered several investigations into the condition of Southern States. On the 24th of February, eight days before the session ended, Judge Poland of Vermont had in his charge a bill which undertook to settle the question which of two rival State governments should be recognized in Arkansas; General Coburn of Indiana had in charge a bill which provided for a new general election in Alabama; the chairman of the Louisiana special committee reported the resolutions which gave peace to that State, under the arrangement known as the Wheeler compromise; Mr. Conger, representing the Vicksburg committee, demanded precedence for a consideration of the affairs of Mississippi; while Mr. Smith of New York, from the Committee on Elections, claimed consideration for an important bill in relation to counting the votes in the election of President and Vice-President of the United States. They were encountered by General Garfield, the chairman of the Committee on Appropriations, and one of the

two unquestioned Republican leaders of the House, with a motion to take up the appropriation bills. This motion prevailed by 147 to 101, General Garfield and a few Republicans voting with the solid Democratic column against the large majority of the Republicans of the House to overthrow those important measures which nearly the whole of his own party favored, just as his predecessor overthrew General Schenck's tariff bill, which had a large majority of the Republican party. The Louisiana resolutions were adopted a few days after, on the 1st of March, the chairman of Appropriations, with great reluctance, consenting to permit a vote on them to be taken without debate, and the Republicans being strong enough to carry them by suspending the rules. I do not mean by this narrative to impute the least blame to General Garfield, or to his distinguished predecessor. Each of them was doing with entire fidelity the important duty he had undertaken of seeing to it that the appropriation bills, without which the functions of the Government must cease, were not lost. Neither of them had any more responsibility than the humblest member of the House for anything that did not come from his own committee.

It would be easy to multiply instances. The strength of the personal influence of able and popular men is and must be very great in a body composed as is our House of Representatives. But there is no man on the floor whose position gives him the right to lead; no man who is responsible that each measure receives its due share of attention; no man of prominence who is not likely to have matters under his special charge which, in the struggle for the command of the previous hours when the session draws near its end, tempt him to thrust out of the House other measures of equal public consequence.

It is needless to set forth at length the evils which this state of things brings forth. There is one which I regard as peculiarly unfortunate for the character and dignity of the House, and whose bad consequences can hardly be overstated. It is that almost inevitably the Speaker of the House is forced into the position of a party leader.

The space of this article will not allow me to point out other kindred evils that have grown up in the recent practice of the House of Representatives. Those to which I have called attention are the most important, and are growing year by year. The House is losing its freedom of debate, of amendment, even of knowledge of what it is itself doing. A member is almost the last person to ask what

is contained in an appropriation bill on its final passage. More and more the contest over important measures is a contest, not whether they shall be discussed, but whether they shall be brought to a vote. The Speaker becomes a party leader, while obliged to observe forms of impartiality. There is nowhere responsibility for securing due attention to important measures, and no authority to decide between their different claims. The chairman of the principal committee becomes almost the natural enemy of every other committee in the House.

I must take another occasion to deal with the question of remedy for these evils. I do not believe in radical changes in the institutions of the state, contrived by *doctrinaires*. The practice of the House of Representatives is a growth, not a scheme. Still less would I urge a blind reverence for English examples. But if we could in some way secure a Speaker who should be absolutely independent of party, it would be a great gain. If the three committees, Ways and Means, Appropriations, and Banking and Currency, could be blended in one, as formerly, the number of this committee to be at least fifteen, dividing its functions among subcommittees, the chairman never himself to have charge of an appropriation bill, but to be responsible for the order of business of the House, subject, of course, to the control of the body itself, a great step in efficiency would be gained.

But the great point, the restoration to the House of its function of a deliberative assembly, can only be fully accomplished by a reduction of its members. I know the strong objections to this reduction. For obvious reasons, it is not likely to receive the assent of the House itself, until demanded by an irresistible public opinion. That demand may be long delayed, perhaps avoided altogether, by making provision for removing from Congress the consideration of private claims, thereby diminishing the pressure of business, and by a reorganization of the system of committees, which shall give the House the benefit of responsible leadership.

GEORGE F. HOAR.